

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JUNE 16, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 3041

**Introduced by Committee on Public Employees, Retirement and
Social Security (Hernandez (Chair), Mullin, Soto, and Torrico)**

February 25, 2008

An act to amend Section 2610 of the Family Code, to amend Sections 20037.6, 20037.7, 20037.8, 20037.9, 20037.10, 20037.11, 20037.12, 20039.5, 20069, 20195, 20228, 20281.5, 20305, 20475, 20479, 20636.1, 20967, 21252, 21264, 21753, 22839, 22864, 22960.15, 75006, 75028.5, 75507, and 75552 of, and to add Sections 21310.5, 75080.5, and 75580.5 to, the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 3041, as amended, Committee on Public Employees, Retirement and Social Security. Public Employees' Retirement Law.

(1) The Public Employees' Retirement Law provides a comprehensive set of rights and benefits based upon age, service credit, and final compensation for members of the Public Employees' Retirement System (PERS). Existing law defines final compensation variously for different member classifications and bargaining units and, in this regard, defines final compensation for a state member for the purpose of calculating retirement benefits as the highest annual average compensation earnable by the member during a designated 12-month period. Existing law provides that final compensation for a person who becomes a state member, as specified, on or after a certain date, and who is represented by one of specified bargaining units, means the highest annual average

compensation earnable by the member during a designated 36-month period.

This bill would further specify that final compensation, for purposes of those provisions, refers to a person who is employed by the state for the first time, with respect to bargaining units 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21.

(2) Existing law, enacted in 2007, permits officers, warrant officers, and enlisted personnel of the California National Guard to become members of PERS upon filing a written election and making the necessary contributions to the retirement fund. Existing law defines final compensation and state service in this regard. Existing law prohibits a National Guard member from receiving health care benefits under the Public Employees' Medical and Hospital Care Act based on his or her service with the California National Guard.

This bill would define final compensation for the purposes of a National Guard member of PERS as the highest average annual compensation that was earned during a consecutive 12-month period while rendering service with the California National Guard. The bill would also make technical changes, including revising the definition of state service in regards to a National Guard member to specify that it does not apply to qualification for health and dental benefits.

(3) Existing law authorizes the Board of Administration of PERS to select, purchase, or acquire in the name of the system and interest in real property in the County of Sacramento for its use, as specified.

This bill would also authorize the board to select, purchase, or acquire in the name of the system real property in California for use by the system as appropriate for disaster preparedness, as specified.

(4) Existing law requires the Board of Administration of PERS to employ a certified public accountant, who is not in public employment, to audit the financial statements of this system. Existing law prohibits the audits from being duplicated by the Department of Finance or the State Auditor.

This bill would specify that the provisions described above do not affect the ability of the State Auditor or the Department of Finance to conduct other types of audits of the system, as authorized. The bill would also make technical changes.

(5) Existing law provides that an employee serving on a less than full-time basis is excluded from the Public Employees' Retirement System unless that person comes within specified exceptions. One exception applies if the person's employment is on a seasonal,

limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, as specified, and the person works more than 125 days, or 1,000 hours within the fiscal year, as specified.

This bill would instead provide that an employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of 6 months is excluded from PERS membership unless specified exceptions apply. Among those exceptions, the bill would provide that a position is not excluded if it requires service equivalent to an average of 20 hours a week for one year or longer. The bill would also revise the exception described above to apply if the person completes 125 days or 1,000 hours, as specified.

(6) The Public Employees' Retirement Law authorizes a contracting agency to amend its contract or previous amendments to its contract, without election among its employees, to reduce benefits, to terminate provisions that are available only by election of the agency to be subject thereto, to provide different benefits or provisions, or to provide a combination of changes with respect to service performed after the effective date of the contract amendment, if the amendment provides that the contract amendments apply uniformly with respect to all members in specified classifications.

This bill would make that provision applicable to local safety officers and school safety members.

(7) That law also prohibits a contract or contract amendment from providing retirement benefits for some, but not all members of specified classifications.

This bill would make that provision applicable to school safety members.

(8) Existing law provides that a PERS member's written application for retirement shall be deemed to have been submitted on the last day for which salary was payable. The effective date of a written application for retirement submitted to the board more than 9 months after the member's discontinuance of state service is determined as specified.

This bill would provide that the effective date shall be the first day of the month in which the member's application is received at an office of the board or by an employee of the system designated by the board.

(9) Existing law permits retired members of PERS, and beneficiaries who are entitled to receive allowances or benefits, to authorize deductions to be made from their retirement allowance payments or from the allowances and benefits, as specified, in accordance with regulations established by the Board of Administration of the system.

This bill would provide that an exercise of the deduction authority described above be in accordance with procedures of the board, would make specified provisions applicable to member classifications other than state members, and would specify the application of these provisions to other services.

(10) The Public Employees' Retirement Law provides for the preservation of the purchasing power of benefits through a system of adjustments in benefits based on changes in living costs. The law also establishes provisions to ensure the federal tax-exempt status of the system and to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions. Existing federal law limits the amount a defined benefit plan may pay a participant annually, and requires that this limitation be adjusted annually by regulation to account for increases in the cost of living.

This bill would specify that the amount payable to a member, including any cost-of-living adjustments, is prohibited from exceeding the limit on annual benefit payments prescribed by federal law, and would incorporate specified provisions of federal law by reference. The bill would also make related changes.

(11) That law provides that 30 days prior to, or 30 days following, retirement and during the open enrollment period, a state employee enrolled in a flexible benefit plan administered by the state shall be given the option to enroll in a health benefit plan, as specified.

This bill would instead provide that 30 days prior to, or 60 days following, retirement and during the open enrollment period, a state employee enrolled in a flexible benefit plan administered by the state shall be given the option to enroll in a health benefit plan, as specified.

(12) The Public Employees' Medical and Hospital Care Act requires that premiums charged for enrollment in a health benefit program reasonably reflect the cost of the benefits, provided that this does not limit the Board of Administration of PERS from adjusting premiums charged under any health benefit plan or contract to reflect regional variations in providing services, which adjustments are at the sole discretion of the board.

This bill would authorize the board to use reserves generated by one or more self-funded health benefit plans to reduce the premiums charged for enrollment in one or more separate self-funded health benefit plans offered by the board, as specified.

(13) The Judges' Retirement Law establishes the Judges' Retirement System to provide retirement benefits for retired judges. Existing law

also establishes the Judges' Retirement System II Law for judges elected or appointed on or after November 9, 1994. This law also specified the payment of accrued allowances that remain unpaid at the time of the death of a judge.

This bill would provide that if a person who is retired under the system is appointed or elected to serve as a judge, he or she shall reinstate from retirement and again become a member of the system, as specified. The bill would also revise the provision governing the payment of accrued, unpaid allowances to provide for their payment to either the estate of the deceased or the duly authorized representative of the estate when the court receives a court order appointing an executor, administrator, or personal representative. The bill would also authorize the payment to be made, if the estate does not require probate, to a successor trustee, or to a beneficiary of the deceased named in a valid will, as applicable and specified.

(14) The bill would also make technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2610 of the Family Code is amended to
2 read:

3 2610. (a) Except as provided in subdivision (b), the court shall
4 make whatever orders are necessary or appropriate to ensure that
5 each party receives the party's full community property share in
6 any retirement plan, whether public or private, including all
7 survivor and death benefits, including, but not limited to, any of
8 the following:

9 (1) Order the disposition of any retirement benefits payable
10 upon or after the death of either party in a manner consistent with
11 Section 2550.

12 (2) Order a party to elect a survivor benefit annuity or other
13 similar election for the benefit of the other party, as specified by
14 the court, in any case in which a retirement plan provides for such
15 an election, provided that no court shall order a retirement plan to
16 provide increased benefits determined on the basis of actuarial
17 value.

(3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:

(A) Article 2 (commencing with Section 21290) of Chapter 13 of Part 3 of Division 5 of Title 2 of the Government Code.

(B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.

(C) Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.

(E) Chapter 15 (commencing with Section 27400) of Part 14 of the Education Code.

(4) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).

SEC. 2. Section 20037.6 of the Government Code is amended to read:

20037.6. (a) Notwithstanding Sections 20035 and 20037, final compensation for a person who is employed by the state for the first time and becomes a state member of the system on or after July 1, 2006, and is represented by State Bargaining Unit 2, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

1 (b) This section applies to service credit accrued while a member
2 of State Bargaining Unit 2.

3 (c) This section does not apply to:

4 (1) Former state employees who return to state employment
5 on or after July 1, 2006.

6 (2) State employees hired prior to July 1, 2006, who were subject
7 to Section 20281.5 during the first 24 months of state employment.

8 (3) State employees hired prior to July 1, 2006, who become
9 subject to representation by State Bargaining Unit 2 on or after
10 July 1, 2006.

11 (4) State employees on an approved leave of absence who return
12 to active employment on or after July 1, 2006.

13 SEC. 3. Section 20037.7 of the Government Code is amended
14 to read:

15 20037.7. (a) Notwithstanding Sections 20035 and 20037, final
16 compensation for a person who is employed by the state for the
17 first time and becomes a state member of the system on or after
18 January 1, 2007, and is represented by State Bargaining Unit 1, 3,
19 4, 11, 14, 15, 17, 20, or 21, means the highest average annual
20 compensation earnable by the member during the consecutive
21 36-month period immediately preceding the effective date of his
22 or her retirement, or the date of his or her last separation from state
23 service if earlier, or during any other period of 36 consecutive
24 months during his or her state membership that the member
25 designates on the application for retirement.

26 (b) This section applies to service credit accrued while a member
27 of State Bargaining Unit 1, 3, 4, 11, 14, 15, 17, 20, or 21.

28 (c) This section does not apply to:

29 (1) Former state employees previously employed before January
30 1, 2007, who return to state employment on or after January 1,
31 2007.

32 (2) State employees hired prior to January 1, 2007, who were
33 subject to Section 20281.5 during the first 24 months of state
34 employment.

35 (3) State employees hired prior to January 1, 2007, who become
36 subject to representation by State Bargaining Unit 1, 3, 4, 11, 14,
37 15, 17, 20, or 21 on or after January 1, 2007.

38 (4) State employees on an approved leave of absence employed
39 before January 1, 2007, who return to active employment on or
40 after January 1, 2007.

1 SEC. 4. Section 20037.8 of the Government Code is amended
2 to read:

3 20037.8. (a) Notwithstanding Sections 20035 and 20037, final
4 compensation for a person who is employed by the state for the
5 first time and becomes a state member of the system on or after
6 January 1, 2007, and is represented by State Bargaining Unit 12
7 or 13, means the highest average annual compensation earnable
8 by the member during the consecutive 36-month period
9 immediately preceding the effective date of his or her retirement,
10 or the date of his or her last separation from state service if earlier,
11 or during any other period of 36 consecutive months during his or
12 her state membership that the member designates on the application
13 for retirement.

14 (b) This section applies to service credit accrued while a member
15 of State Bargaining Unit 12 or 13.

16 (c) This section does not apply to:

17 (1) Former state employees previously employed before January
18 1, 2007, who return to state employment on or after January 1,
19 2007.

20 (2) State employees hired prior to January 1, 2007, who were
21 subject to Section 20281.5 during the first 24 months of state
22 employment.

23 (3) State employees hired prior to January 1, 2007, who become
24 subject to representation by State Bargaining Unit 12 or 13 on or
25 after January 1, 2007.

26 (4) State employees on an approved leave of absence employed
27 before January 1, 2007, who return to active employment on or
28 after January 1, 2007.

29 SEC. 5. Section 20037.9 of the Government Code is amended
30 to read:

31 20037.9. (a) Notwithstanding Sections 20035 and 20037, final
32 compensation for a person who is employed by the state for the
33 first time and becomes a state member of the system on or after
34 January 1, 2007, and is represented by State Bargaining Unit 16
35 or 19, means the highest average annual compensation earnable
36 by the member during the consecutive 36-month period
37 immediately preceding the effective date of his or her retirement,
38 or the date of his or her last separation from state service if earlier,
39 or during any other period of 36 consecutive months during his or

1 her state membership that the member designates on the application
2 for retirement.

3 (b) This section applies to service credit accrued while a member
4 of State Bargaining Unit 16 or 19.

5 (c) This section does not apply to:

6 (1) Former state employees previously employed before January
7 1, 2007, who return to state employment on or after January 1,
8 2007.

9 (2) State employees hired prior to January 1, 2007, who were
10 subject to Section 20281.5 during the first 24 months of state
11 employment.

12 (3) State employees hired prior to January 1, 2007, who become
13 subject to representation by State Bargaining Unit 16 or 19 on or
14 after January 1, 2007.

15 (4) State employees on an approved leave of absence employed
16 before January 1, 2007, who return to active employment on or
17 after January 1, 2007.

18 SEC. 6. Section 20037.10 of the Government Code is amended
19 to read:

20 20037.10. (a) Notwithstanding Sections 20035 and 20037,
21 final compensation for a person who is employed by the state for
22 the first time and becomes a state member of the system on or after
23 January 1, 2007, and is represented by State Bargaining Unit 7,
24 means the highest average annual compensation earnable by the
25 member during the consecutive 36-month period immediately
26 preceding the effective date of his or her retirement, or the date of
27 his or her last separation from state service if earlier, or during any
28 other period of 36 consecutive months during his or her state
29 membership that the member designates on the application for
30 retirement.

31 (b) This section applies to service credit accrued while a member
32 of State Bargaining Unit 7.

33 (c) This section does not apply to:

34 (1) Service credit accrued while classified as a state peace
35 officer/firefighter while a member of Bargaining Unit 7.

36 (2) Former state employees previously employed before January
37 1, 2007, who return to state employment on or after January 1,
38 2007.

1 (3) State employees hired prior to January 1, 2007, who were
2 subject to Section 20281.5 during the first 24 months of state
3 employment.

4 (4) State employees hired prior to January 1, 2007, who become
5 subject to representation by State Bargaining Unit 7 on or after
6 January 1, 2007.

7 (5) State employees on an approved leave of absence employed
8 before January 1, 2007, who return to active employment on or
9 after January 1, 2007.

10 SEC. 7. Section 20037.11 of the Government Code is amended
11 to read:

12 20037.11. (a) Notwithstanding Sections 20035 and 20037,
13 final compensation for a person who is employed by the state for
14 the first time and becomes a state member of the system on or after
15 January 1, 2007, and is represented by State Bargaining Unit 10,
16 means the highest average annual compensation earnable by the
17 member during the consecutive 36-month period immediately
18 preceding the effective date of his or her retirement, or the date of
19 his or her last separation from state service if earlier, or during any
20 other period of 36 consecutive months during his or her state
21 membership that the member designates on the application for
22 retirement.

23 (b) This section applies to service credit accrued while a member
24 of State Bargaining Unit 10.

25 (c) This section does not apply to:

26 (1) Former state employees previously employed before January
27 1, 2007, who return to state employment on or after January 1,
28 2007.

29 (2) State employees hired prior to January 1, 2007, who were
30 subject to Section 20281.5 during the first 24 months of state
31 employment.

32 (3) State employees hired prior to January 1, 2007, who become
33 subject to representation by State Bargaining Unit 10 on or after
34 January 1, 2007.

35 (4) State employees on an approved leave of absence employed
36 before January 1, 2007, who return to active employment on or
37 after January 1, 2007.

38 SEC. 8. Section 20037.12 of the Government Code is amended
39 to read:

1 20037.12. (a) Notwithstanding Sections 20035 and 20037,
2 final compensation for a person who is employed by the state for
3 the first time and becomes a state member of the system on or after
4 January 1, 2007, and is represented by State Bargaining Unit 18,
5 means the highest average annual compensation earnable by the
6 member during the consecutive 36-month period immediately
7 preceding the effective date of his or her retirement, or the date of
8 his or her last separation from state service if earlier, or during any
9 other period of 36 consecutive months during his or her state
10 membership that the member designates on the application for
11 retirement.

12 (b) This section applies to service credit accrued while a member
13 of State Bargaining Unit 18.

14 (c) This section does not apply to:

15 (1) Former state employees previously employed before January
16 1, 2007, who return to state employment on or after January 1,
17 2007.

18 (2) State employees hired prior to January 1, 2007, who were
19 subject to Section 20281.5 during the first 24 months of state
20 employment.

21 (3) State employees hired prior to January 1, 2007, who become
22 subject to representation by State Bargaining Unit 18 on or after
23 January 1, 2007.

24 (4) State employees on an approved leave of absence employed
25 before January 1, 2007, who return to active employment on or
26 after January 1, 2007.

27 SEC. 9. Section 20039.5 of the Government Code is amended
28 to read:

29 20039.5. Notwithstanding Article 5 (commencing with Section
30 20350) of Chapter 3, or any other provision of this part, “final
31 compensation” for the purposes of determining any pension or
32 benefit for service with the California National Guard with respect
33 to a National Guard member means the highest average annual
34 compensation that was earned during a consecutive 12-month
35 period while rendering service with the California National Guard.
36 The final compensation of a National Guard member under another
37 retirement or pension system shall not apply to the calculation of
38 his or her retirement allowance with respect to service with the
39 California National Guard.

1 SEC. 10. Section 20069 of the Government Code is amended
2 to read:

3 20069. (a) “State service” means service rendered as an
4 employee or officer (employed, appointed, or elected) of the state,
5 the California Institute for Regenerative Medicine and the officers
6 and employees of its governing body, the university, a school
7 employer, or a contracting agency, for compensation, and only
8 while he or she is receiving compensation from that employer
9 therefor, except as provided in Article 4 (commencing with Section
10 20990) of Chapter 11.

11 (b) “State service,” solely for purposes of qualification for
12 benefits and retirement allowances under this system, shall also
13 include service rendered as an officer or employee of a county if
14 the salary for the service constitutes compensation earnable by a
15 member of this system under Section 20638.

16 (c) “State service,” except for purposes of qualification for
17 health and dental benefits, shall also include compensated service
18 rendered by an officer, warrant officer, or a person of the enlisted
19 ranks of the California National Guard who has elected to become
20 a member pursuant to Section 20326 and who has not canceled
21 his or her membership pursuant to Section 20327.

22 SEC. 11. Section 20195 of the Government Code is amended
23 to read:

24 20195. (a) The board may select, purchase, or acquire in the
25 name of the system, the fee or any lesser interest in real property,
26 improved or unimproved, and may construct or remodel, and equip,
27 an office building, including appropriate satellite structures, in the
28 County of Sacramento, ~~California~~, for its use and for the use of
29 other state retirement systems excepting the State Teachers’
30 Retirement System, other departments, boards, and agencies of
31 the state, or appropriate private commercial entities as space may
32 be available from time to time. The office building and satellite
33 structures shall conform to the Capital Master Plan if located within
34 an area subject to the plan.

35 (b) The board may select, purchase, or acquire in the name of
36 the system, the fee or any lesser interest in real property, improved
37 or unimproved, and may construct or remodel, and equip, business
38 recovery centers in California for use by the system as an alternate
39 facility, emergency operations center, or data center that the board
40 determines is appropriate for disaster preparedness.

1 (c) If the board acquires bare land pursuant to subdivision (a),
2 improvements shall be constructed according to plans approved
3 by the State Public Works Board and Department of General
4 Services.

5 (d) If the board acquires land with improvements upon the land
6 pursuant to subdivision (a), the improvements shall be remodeled
7 or completed in accordance with plans approved by the State Public
8 Works Board and Department of General Services.

9 (e) If condemnation of the property selected is necessary, the
10 board may elect to deposit the funds deemed necessary with the
11 Treasurer. The funds are appropriated for purchase of the selected
12 property subject to the Property Acquisition Law.

13 (f) Work on all projects shall be done under contract awarded
14 to the lowest responsible bidder pursuant to bidding procedures
15 set forth in Part 2 (commencing with Section 10100) of Division
16 2 of the Public Contract Code.

17 SEC. 12. Section 20228 of the Government Code is amended
18 to read:

19 20228. The board shall annually employ a certified public
20 accountant, who is not in public employment, to audit the financial
21 statements of this system. The term for which the board may
22 contract to employ a certified public accountant shall not exceed
23 five years. The board shall not contract to employ the same certified
24 public accountant for two consecutive five-year terms. The costs
25 of the audit shall be paid from the income of the retirement fund.
26 The audit shall be made annually. The board shall file a copy of
27 the audit report with the Governor, the Secretary of the Senate,
28 and the Chief Clerk of the Assembly.

29 The board, for purposes of Section 7504, may file internally
30 prepared financial statements with the Controller within six months
31 of the end of the fiscal year, and shall file independently audited
32 financial statements as soon as they are available.

33 The annual audits of the financial statements of the system shall
34 not be duplicated by the Department of Finance or the State
35 Auditor. This section does not affect the ability of the State Auditor
36 or the Department of Finance to conduct other types of audits of
37 the system as otherwise authorized by statute. This system shall
38 be exempt from a pro rata general administrative charge for
39 auditing.

1 SEC. 13. Section 20281.5 of the Government Code is amended
2 to read:

3 20281.5. (a) Notwithstanding Section 20281, a person who
4 becomes a state miscellaneous member or state industrial member
5 of the system on or after the effective date of this section because
6 the person is first employed by the state and qualifies for
7 membership shall be subject to the provisions of this section.

8 (b) Members subject to this section shall not accrue credit for
9 service in the system and shall not make employee contributions
10 to the system, including the contributions set forth in Section
11 20677.4, for employment with the state until the first day of the
12 first pay period commencing 24 months after becoming a member
13 of the system.

14 (c) Notwithstanding subdivision (a), this section shall not apply
15 to any of the following:

16 (1) Persons who are already members or annuitants of the system
17 at the time they are first employed by the state.

18 (2) Employees of the California State University, or the
19 legislative or judicial branch of state government.

20 (3) Members of the Judges' Retirement System, the Judges'
21 Retirement System II, the Legislators' Retirement System, the
22 State Teachers' Retirement System, or the University of California
23 Retirement Plan.

24 (4) Persons who are members of a reciprocal retirement system
25 and whose employment was subject to a reciprocal retirement
26 system within the six months prior to membership in this system.

27 (5) Persons whose service is not included in the federal system.

28 (6) Persons who are employed by the Department of the
29 California Highway Patrol as students at the department's training
30 school established pursuant to Section 2262 of the Vehicle Code.

31 (7) Persons who had ceased to be members pursuant to Section
32 20340 or 21075.

33 (8) Persons who are National Guard members pursuant to
34 Section 20380.5.

35 (d) A separation of employment does not alter the 24-month
36 period described by subdivision (b). A member who separates
37 from state employment shall remain subject to this section if he
38 or she returns to state employment as a state miscellaneous or state
39 industrial member within that 24-month period.

1 (e) Any regulations adopted by the board to implement the
2 requirements of this section shall not be subject to the review and
3 approval of the Office of Administrative Law, pursuant to Chapter
4 3.5 (commencing with Section 11340) of Part 1 of Division 3. The
5 regulations shall become effective immediately upon filing with
6 the Secretary of State.

7 SEC. 14. Section 20305 of the Government Code is amended
8 to read:

9 20305. (a) An employee whose appointment or employment
10 contract does not fix a term of full-time, continuous employment
11 in excess of six months is excluded from this system unless:

12 (1) He or she is a member at the time he or she renders that
13 service and is not otherwise excluded pursuant to this article or by
14 a provision of a contract.

15 (2) His or her position requires regular, part-time service for
16 one year or longer for at least an average of 20 hours a week, or
17 requires service that is equivalent to at least an average of 20 hours
18 a week for one year or longer, unless he or she elects membership
19 pursuant to Section 20325.

20 (3) His or her employment is, in the opinion of the board, on a
21 seasonal, limited-term, on-call, emergency, intermittent, substitute,
22 or other irregular basis, and is compensated and meets one of the
23 following conditions:

24 (A) The appointment or employment contract does not fix a
25 term of full-time, continuous employment in excess of six months,
26 but full-time employment continues for longer than six months,
27 in which case membership shall be effective not later than the first
28 day of the first pay period of the seventh month of employment.

29 (B) The person completes 125 days, if employed on a per diem
30 basis or, if employed on other than a per diem basis, completes
31 1,000 hours within the fiscal year, in which case, membership shall
32 be effective not later than the first day of the first pay period of
33 the month following the month in which 125 days or 1,000 hours
34 of service were completed. For purposes of this subdivision, "day"
35 means each eight-hour period of employment worked by an
36 employee paid on a per diem basis so that membership is effective
37 after he or she has completed 1,000 hours of compensated service
38 in a fiscal year.

39 (C) The person is employed by the Department of Forestry and
40 Fire Protection in one of the positions that provide state safety

1 membership pursuant to Section 20400 or state peace
2 officer/firefighter membership pursuant to Section 20392.

3 (4) He or she is a temporary faculty member of the California
4 State University and meets one of the following conditions:

5 (A) He or she works two consecutive semesters or three
6 consecutive quarters at half-time or more, and is not otherwise
7 excluded pursuant to this article, in which case, membership shall
8 be effective with the start of the next consecutive semester or
9 quarter if the appointment requires service of half-time or more.

10 (B) He or she works two consecutive semesters or three
11 consecutive quarters at a minimum teaching load of six weighted
12 units, and is not otherwise excluded pursuant to this article, in
13 which case membership shall be effective at the start of the next
14 consecutive semester or quarter, but not earlier than July 1, 2004,
15 if the appointment requires service of six weighted units or more.
16 This subparagraph does not apply to faculty members unless
17 provided for in a memorandum of understanding agreed upon, on
18 or after January 1, 2003, pursuant to Chapter 12 (commencing
19 with Section 3560) of Division 4 of Title 1, or authorized by the
20 Trustees of the California State University for employees excluded
21 from collective bargaining.

22 (5) He or she is a member of the Board of Prison Terms, the
23 State Personnel Board, or the State Air Resources Board and elects
24 to become a member pursuant to Section 20320.

25 (6) He or she is participating in partial service retirement,
26 pursuant to Article 1.7 (commencing with Section 19996.30) of
27 Chapter 7 of Part 2.6.

28 (7) He or she is included by specific provision of the board
29 relating to the exclusion of less than full-time employees.

30 (b) This section shall supersede any contract provision excluding
31 persons in any temporary or seasonal employment basis and shall
32 apply only to persons entering employment on and after January
33 1, 1975. Except as provided in Section 20502, no contract or
34 contract amendment entered into after January 1, 1981, shall
35 contain any provision excluding persons on an irregular
36 employment basis.

37 SEC. 15. Section 20475 of the Government Code is amended
38 to read:

39 20475. Notwithstanding Section 20474, a contracting agency
40 may amend its contract or previous amendments to its contract,

1 without election among its employees, to reduce benefits, to
2 terminate provisions that are available only by election of the
3 agency to become subject thereto, to provide different benefits or
4 provisions or to provide a combination of those changes with
5 respect to service performed after the effective date of the contract
6 amendment made pursuant to this section, if the contracting agency
7 has fully discharged all of the obligations imposed by Chapter 10
8 (commencing with Section 3500) of Division 4 of Title 1 with
9 respect to the contract amendments, and if the amendment provides
10 that:

11 (a) The contract amendments apply uniformly with respect to
12 all members within each of the following classifications: local
13 miscellaneous members, local police officers, local firefighters,
14 county peace officers, local sheriffs, local safety officers, school
15 safety members, or all local safety members other than local police
16 officers, local firefighters, county peace officers, local sheriffs,
17 local safety officers, or school safety members.

18 (b) A member shall be subject to the contract as amended only
19 if, after the effective date of the contract amendment, the member
20 either (1) receives service credit for the first time within a
21 classification, or (2) the member returns to service within a
22 classification following termination of membership as provided
23 for in subdivision (b) of Section 20340 unless the member has
24 redeposited or elects prior to 90 days after returning to service to
25 redeposit contributions pursuant to Section 20750, in which case
26 the member shall not be subject to the contract amendment.

27 Amendments to the contract and amendments of previous
28 amendments to the contract may be effected pursuant to this section
29 only once during any three-year period with respect to each of the
30 classifications.

31 SEC. 16. Section 20479 of the Government Code is amended
32 to read:

33 20479. (a) Notwithstanding any other provision of law,
34 including, but not limited to, Chapter 10 (commencing with Section
35 3500) of Division 4 of Title 1, no contract or contract amendment
36 shall be made to provide retirement benefits for some, but not all
37 members of the following membership classifications: local
38 miscellaneous members, local police officers, local firefighters,
39 county peace officers, local sheriffs, local safety officers, or school
40 safety members.

(b) No contract or contract amendments shall provide different retirement benefits for a subgroup, including, but not limited to, bargaining units or unrepresented groups, within those membership classifications.

(c) This section does not preclude changing membership classification from one membership classification to another membership classification or exclusion of groups of members by contract.

(d) For purposes of this section, “benefit” shall not be limited to the benefits set forth in Section 20020.

SEC. 17. Section 20636.1 of the Government Code is amended to read:

20636.1. (a) Notwithstanding Section 20636, and Section 45102 of the Education Code, “compensation earnable” by a school member means the payrate and special compensation of the member, as defined by subdivisions (b) and (c), and as limited by Section 21752.5.

(b) (1) “Payrate” means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. ~~For noncertificated purposes of this part, for classified members, where the normal work schedule is less than full-time employment is deemed to be~~ 40 hours per week, ~~payments.~~ Payments for additional services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(A) For the purposes of this section, ~~“noncertificated members”~~ “classified members” shall mean members who retain membership under this system while employed with a school employer in positions not subject to coverage under the Defined Benefit Program under the State Teacher’s Retirement System.

(B) For the purposes of this section, and Sections 20962 and 20966, “certificated members” shall mean members who retain membership under this system while employed in positions subject

1 to coverage under the Defined Benefit Program under the State
2 Teacher's Retirement System.

3 (2) The computation for any leave without pay of a member
4 shall be based on the compensation earnable by him or her at the
5 beginning of the absence.

6 (3) The computation for time prior to entering state service shall
7 be based on the compensation earnable by him or her in the position
8 first held by him or her in state service.

9 (c) (1) Special compensation of a school member includes any
10 payment received for special skills, knowledge, abilities, work
11 assignment, workdays or hours, or other work conditions.

12 (2) Special compensation shall be limited to that which is
13 received by a member pursuant to a labor policy or agreement or
14 as otherwise required by state or federal law, to similarly situated
15 members of a group or class of employment that is in addition to
16 payrate. If an individual is not part of a group or class, special
17 compensation shall be limited to that which the board determines
18 is received by similarly situated members in the closest related
19 group or class that is in addition to payrate, subject to the
20 limitations of paragraph (2) of subdivision (e).

21 (3) Special compensation shall be for services rendered during
22 normal working hours and, when reported to the board, the
23 employer shall identify the pay period in which the special
24 compensation was earned.

25 (4) Special compensation may include the full monetary value
26 of normal contributions paid to the board by the employer, on
27 behalf of the member and pursuant to Section 20691, provided
28 that the employer's labor policy or agreement specifically provides
29 for the inclusion of the normal contribution payment in
30 compensation earnable.

31 (5) The monetary value of any service or noncash advantage
32 furnished by the employer to the member, except as expressly and
33 specifically provided in this part, shall not be special compensation
34 unless regulations promulgated by the board specifically determine
35 that value to be "special compensation."

36 (6) The board shall promulgate regulations that delineate more
37 specifically and exclusively what constitutes "special
38 compensation" as used in this section. A uniform allowance, the
39 monetary value of employer-provided uniforms, holiday pay, and
40 premium pay for hours worked within the normally scheduled or

1 regular working hours that are in excess of the statutory maximum
2 workweek or work period applicable to the employee under Section
3 201 et seq. of Title 29 of the United States Code shall be included
4 as special compensation and appropriately defined in those
5 regulations.

6 (7) Special compensation does not include any of the following:

7 (A) Final settlement pay.

8 (B) Payments made for additional services rendered outside of
9 normal working hours, whether paid in lump sum or otherwise.

10 (C) Any other payments the board has not affirmatively
11 determined to be special compensation.

12 (d) Notwithstanding any other provision of law, payrate and
13 special compensation schedules, ordinances, or similar documents
14 shall be public records available for public scrutiny.

15 (e) (1) As used in this part, “group or class of employment”
16 means a number of employees considered together because they
17 share similarities in job duties, work location, collective bargaining
18 unit, or other logical work related grouping. Under no
19 circumstances shall one employee be considered a group or class.

20 (2) Increases in compensation earnable granted to any employee
21 who is not in a group or class shall be limited during the final
22 compensation period applicable to the employees, as well as the
23 two years immediately preceding the final compensation period,
24 to the average increase in compensation earnable during the same
25 period reported by the employer for all employees who are in the
26 same membership classification, except as may otherwise be
27 determined pursuant to regulations adopted by the board that
28 establish reasonable standards for granting exceptions.

29 (f) As used in this part, “final settlement pay” means any pay
30 or cash conversions of employee benefits that are in excess of
31 compensation earnable, that are granted or awarded to a member
32 in connection with or in anticipation of a separation from
33 employment. The board shall promulgate regulations that delineate
34 more specifically what constitutes final settlement pay.

35 ~~SEC. 17.~~

36 *SEC. 18.* Section 20967 of the Government Code is amended
37 to read:

38 20967. For the purpose of calculating retirement benefits based
39 on part-time service, except under Section 21381, compensation
40 earnable shall be taken as the compensation that would have been

1 earnable if the employment had been on a full-time basis and the
2 member had worked full time, and shall conform to the definitions
3 given in Section 20636.1 for school members and Section 20636
4 for all other employees.

5 ~~SEC. 18.~~

6 *SEC. 19.* Section 21252 of the Government Code is amended
7 to read:

8 21252. (a) A member's written application for retirement, if
9 submitted to the board within nine months after the date the
10 member discontinued his or her state service, and, in the case of
11 retirement for disability, if the member was physically or mentally
12 incapacitated to perform his or her duties from the date the member
13 discontinued state service to the time the written application for
14 retirement was submitted to the board, shall be deemed to have
15 been submitted on the last day for which salary was payable. The
16 effective date of a written application for retirement submitted to
17 the board more than nine months after the member's discontinuance
18 of state service shall be the first day of the month in which the
19 member's application is received at an office of the board or by
20 an employee of this system designated by the board.

21 (b) An application for retirement may only be submitted by or
22 for a member who is living on the date the application is actually
23 received by the system. If the member has been deemed
24 incompetent to act on his or her own behalf continuously from the
25 last day for which salary was payable, the effective date of
26 retirement may not be earlier than one year prior to the month in
27 which an application submitted by the guardian of the member's
28 estate is received by the system.

29 (c) Notwithstanding any other provision of law, a member who
30 separates from a retirement system that has established reciprocity
31 with this system with the intention of retiring concurrently under
32 both systems and who submits his or her application for retirement
33 for service to the board within nine months after that separation,
34 may have his or her application received and acted upon by this
35 system as if the application were submitted pursuant to this section.

36 ~~SEC. 19.~~

37 *SEC. 20.* Section 21264 of the Government Code is amended
38 to read:

39 21264. Retired members of this system, and beneficiaries who
40 are entitled to receive allowances or benefits under this part, may

1 authorize deductions to be made from their retirement allowance
2 payments or from the allowances and benefits, respectively, or
3 from either or both if both are being received, in accordance with
4 regulations or procedures established by the board for the payment
5 of group insurance premiums and other premiums for benefits or
6 protection provided for under Section 1151, including
7 employer-sponsored voluntary insurance programs, for credit union
8 payments or shares, or for the payment, with respect to any retired
9 member of this system, of dues or for any other services provided
10 pursuant to Article 6 (commencing with Section 1150) of Chapter
11 1 of Division 4 of Title 1. The board shall determine the additional
12 cost involved in making deductions under this section and the state
13 agency, the public agency, the association, or the unit thereof, or
14 the credit union shall pay the amount of the additional cost to the
15 board for deposit in the retirement fund.

16 ~~SEC. 20.~~

17 *SEC. 21.* Section 21310.5 is added to the Government Code,
18 to read:

19 21310.5. The cost-of-living adjustments under Section 415(d)
20 of the Internal Revenue Code to the limits described in Section
21 415(b) of the Internal Revenue Code, as prescribed by the
22 regulations of the Department of the Treasury of the United States,
23 are hereby incorporated by reference and shall continue to apply
24 after a member's severance from employment or annuity starting
25 date. The amount payable to a member in any limitation year,
26 including any cost-of-living adjustments provided under this article,
27 shall not be greater than the limit applicable under Section 415(b)
28 of the Internal Revenue Code at the annuity starting date, as
29 increased in subsequent years pursuant to Section 415(d) of the
30 Internal Revenue Code and the associated regulations.

31 ~~SEC. 21.~~

32 *SEC. 22.* Section 21753 of the Government Code is amended
33 to read:

34 21753. Notwithstanding any other provision of law and except
35 as provided in Section 21310.5, the retirement allowance of a
36 member shall be increased to reflect cost-of-living adjustments to
37 the limits contained in Section 415 of Title 26 of the United States
38 Code as provided in Section 415(d) of that code, provided that the
39 member's allowance determined without regard to Section 415
40 equals or exceeds the applicable limit as indexed. Nothing in this

1 section is intended to, nor shall be construed to, entitle a retired
2 member to a cost-of-living adjustment to his or her allowance in
3 excess of that provided pursuant to Part 3 (commencing with
4 Section 20000).

5 ~~SEC. 22.~~

6 *SEC. 23.* Section 22839 of the Government Code is amended
7 to read:

8 22839. Thirty days prior to, or 60 days following, retirement
9 and during the open enrollment period, a state employee enrolled
10 in a flexible benefit plan administered by the state shall be given
11 the option to enroll in a health benefit plan approved or maintained
12 by the board and receive the applicable employer contribution, if
13 the state employee would otherwise qualify as an annuitant.

14 ~~SEC. 23.~~

15 *SEC. 24.* Section 22864 of the Government Code is amended
16 to read:

17 22864. (a) Premiums charged for enrollment in a health benefit
18 plan shall reasonably reflect the cost of the benefits provided.

19 (b) This part does not limit the board's authority to do any of
20 the following:

21 (1) Enter into contracts with carriers providing compensation
22 based on carrier performance.

23 (2) Credit premiums to an employer for expenditures that the
24 board determines are likely to improve the health status of
25 employees and annuitants or otherwise reduce health care costs.

26 (3) Adjust the premiums charged under any health benefit plan
27 or contract to reflect regional variations in the cost of health care
28 services and other relevant factors. Any adjustment of these
29 premiums shall be at the sole discretion of the board and shall only
30 apply to the premiums charged to employees and annuitants of
31 contracting agencies. The board may require a contracting agency
32 and its employees and annuitants to pay the premium rate
33 established pursuant to this paragraph, which may be different
34 than the health benefit plan or contract premium rate that would
35 otherwise be applicable to that agency.

36 (4) Use reserves generated by one or more self-funded health
37 benefit plans to reduce the premiums charged for enrollment in
38 one or more separate self-funded health benefit plans offered by
39 the board. The board, in its sole discretion, shall determine whether

1 a self-funded health benefit plan maintains reserves and the amount
2 of reserves to be used pursuant to this part.

3 ~~SEC. 24.~~

4 *SEC. 25.* Section 22960.15 of the Government Code is amended
5 to read:

6 22960.15. “Eligible employee” means any person employed
7 by the state, whose compensation is paid out of funds directly
8 controlled by the state, and who is subject to coverage by the plan
9 pursuant to the provisions of Section 22960.

10 ~~SEC. 25.~~

11 *SEC. 26.* Section 75006 of the Government Code is amended
12 to read:

13 75006. (a) Any allowance payable to a retired judge or to a
14 surviving spouse or to an eligible surviving child which has accrued
15 and remained unpaid at the time of the judge’s or the surviving
16 spouse’s or surviving child’s death, or any unclaimed warrant
17 issued prior to the date of death and returned to the system, shall
18 be paid pursuant to the following order:

19 (1) The survivor entitled to an allowance payable by this system.

20 (2) The beneficiary designated by the surviving spouse, eligible
21 surviving child, or retired judge if there is no eligible survivor.

22 (3) The estate of the deceased, if there is no one entitled to
23 payment under paragraph (1) or (2). The payment to the estate
24 shall be paid to either the estate of the deceased or the duly
25 authorized representative or representatives of the estate when this
26 system receives a court order appointing an executor, administrator,
27 or personal representative.

28 (4) If the estate does not require probate and the deceased has
29 a trust, the payment may, in the judgment of the board, be paid to
30 the successor trustee named in the trust.

31 (5) If the estate does not require probate and the deceased does
32 not have a trust, the payment may, in the judgment of the board,
33 be paid to the beneficiary or beneficiaries of the deceased named
34 in a valid will.

35 (b) If there is no qualifying beneficiary pursuant to paragraphs
36 (1) to (5), inclusive, of subdivision (a), the payment shall be paid
37 to the surviving next of kin of the deceased pursuant to the order
38 of distribution specified in Section 21493.

1 ~~SEC. 26.~~

2 SEC. 27. Section 75028.5 of the Government Code is amended
3 to read:

4 75028.5. After a judge has withdrawn his or her accumulated
5 contributions upon discontinuance of his or her service, that service
6 shall not count in the event he or she later becomes a judge again,
7 until he or she pays into the Judges' Retirement Fund the amount
8 of accumulated contributions withdrawn by him or her, plus interest
9 thereon at the rate of interest then being required to be paid by
10 members of the Public Employees' Retirement System under
11 Section 20750 from the date of withdrawal to the date of his or
12 her payment.

13 ~~SEC. 27.~~

14 SEC. 28. Section 75080.5 is added to the Government Code,
15 to read:

16 75080.5. (a) Except as described in subdivision (b), if a person
17 who is retired under this system is appointed or elected to serve
18 as a judge, he or she shall reinstate from retirement and again
19 become a member of the Judges' Retirement System pursuant to
20 this chapter.

21 (b) This section shall not apply to a retired judge who is assigned
22 to serve in a court pursuant to Section 68543.5, and he or she shall
23 not earn service credit or be entitled to retirement benefits under
24 this part for that assignment.

25 ~~SEC. 28.~~

26 SEC. 29. Section 75507 of the Government Code is amended
27 to read:

28 75507. (a) Any allowance payable to a retired judge or to a
29 surviving spouse or to an eligible surviving child that has accrued
30 and remained unpaid at the time of the death of the judge or the
31 death of a surviving spouse or surviving child, or any unclaimed
32 warrant issued prior to the date of death and returned to the board,
33 shall be paid pursuant to the following order:

34 (1) The survivor entitled to an allowance payable by the board.

35 (2) The beneficiary designated by the surviving spouse, eligible
36 surviving child, or retired judge if there is no eligible survivor.

37 (3) The estate of the deceased, if there is no one entitled to
38 payment under paragraph (1) or (2). The payment to the estate
39 shall be paid to either the estate of the deceased or the duly
40 authorized representative or representatives of the estate when this

1 system receives a court order appointing an executor, administrator,
2 or personal representative.

3 (4) If the estate does not require probate and the deceased has
4 a trust, the payment may, in the judgment of the board, be paid to
5 the successor trustee named in the trust.

6 (5) ~~If~~ If the estate does not require probate and the deceased
7 does not have a trust, the payment may, in the judgment of the
8 board, be paid to the beneficiary or beneficiaries of the deceased
9 named in a valid will.

10 (b) If there is no qualifying beneficiary pursuant to paragraphs
11 (1) to (5), inclusive, of subdivision (a), the payment shall be paid
12 to the surviving next of kin of the deceased pursuant to the order
13 of distribution specified in Section 21493.

14 ~~SEC. 29.~~

15 *SEC. 30.* Section 75552 of the Government Code is amended
16 to read:

17 75552. (a) After payment of a portion of the member's
18 contributions to a nonmember pursuant to subdivision (b) of
19 Section 75551, the member may redeposit the full amount in the
20 fund at any time before he or she retires or otherwise leaves judicial
21 office. The redeposit shall include interest at the rate of interest
22 then being required to be paid by members of the Public
23 Employees' Retirement System under Section 20750 from the date
24 of payment to the date of redeposit. A partial redeposit shall not
25 be accepted.

26 (b) After payment of a portion of the member's monetary credits
27 to a nonmember pursuant to subdivision (c) of Section 75551, the
28 member may redeposit the full amount in the fund at any time
29 before he or she retires or otherwise leaves judicial office. The
30 redeposit shall include interest at the greater of: (1) the rate of
31 interest then being required to be paid by members of the Public
32 Employees' Retirement System under Section 20750 from the date
33 of payment to the date of redeposit; or (2) the compounded amounts
34 that would have been credited to the member's monetary account
35 pursuant to subdivision (b) of Section 75520 had the payment not
36 been made to the nonmember. A partial redeposit shall not be
37 accepted.

38 ~~SEC. 30.~~

39 *SEC. 31.* Section 75580.5 is added to the Government Code,
40 to read:

1 75580.5. (a) Except as described in subdivision (b), if a person
2 who is retired under this system, for service or for disability, is
3 appointed or elected to serve as a judge, he or she shall reinstate
4 from retirement and again become a member of this system
5 pursuant to this chapter.

6 (b) This section shall not apply to a retired judge who is assigned
7 to serve in a court pursuant to Section 68543.5, and he or she shall
8 not earn service credit or be entitled to retirement benefits under
9 this part for that assignment.

O